

# McCULLOUGH HILL, PS

August 28, 2008

Tukwila Planning Commission  
c/o Department of Community Development  
6300 Southcenter Blvd., #100  
Tukwila, WA 98188

RE: Shoreline Master Program Update

Dear Commissioners:

This is on behalf of La Pianta LLC ("La Pianta"). La Pianta respectfully asks the Planning Commission to take the following actions:

1. Direct staff to assemble a Citizens' Stakeholder Committee to review and comment on the Shoreline Master Program Update ("SMP Update"), prior to any Planning Commission action on the SMP Update;
2. Continue the public hearing on the SMP Update to allow the public to comment on the Stakeholders' review and recommendations, as well as to allow the public a meaningful opportunity to review and comment on the SMP Update, as it may be amended in the coming weeks; and
3. Direct staff to prepare responses to La Pianta's comments on the SMP Update which are enclosed with this letter, and to prepare responses to all citizen comments submitted on the SMP Update.

As we are sure the Commissioners understand, the SMP Update is complex, controversial, technical, and will result in severe economic impacts on affected property owners. In that light, state law and principles of fundamental fairness mandate that adequate time be provided for public comment on the SMP Update, that the City consider in a meaningful manner the recommendations of a convened Citizens' Stakeholder Committee, and that all public comments on the SMP Update be evaluated and addressed.

The attached comments, prepared by La Pianta, address in some detail La Pianta's concerns about the lawfulness, fairness, and propriety of the provisions of the SMP Update. In particular, La Pianta is surprised that, given the immense economic ramifications of the SMP Update to both property owners and the City, there is virtually no analysis of the economic impacts of the proposal, despite the fact that applicable regulations require such an analysis.

Finally, we must point out that the handout distributed by City staff at the public open house materially misrepresents the impacts of the SMP Update. How can the public "participate" in development of the SMP Update if the public is misinformed as to its contents? For example, with

DATE 8/28/08  
EXHIBIT 14  
PROJECT 2000 Updte  
FILE NO 204-038

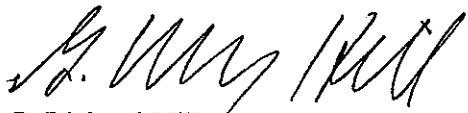
August 28, 2008

Page 2 of 2

respect to the Urban Conservancy designation, the handout compares existing conditions with the SMP Update. The sketch depicts a building under existing conditions at the same location as under the SMP Update. However, under existing conditions, that same building could be located over 100 feet closer to the shoreline. This is a drastic change which is not acknowledged in the handout. Moreover, the sketch shows commercial parking located in the buffer area under the SMP Update. The proposed regulations, however, would preclude commercial parking in those areas. Finally, in the handout's chart which compares allowed uses in the current SMP to allowed uses in the proposed SMP, City staff fails to indicate the many restrictions, including height, bulk, and location, which the proposed SMP would impose on allowed uses. It is indeed impossible to understand the impacts of the proposed SMP from the handouts distributed at the public open house. These handouts should be revised and re-distributed at a new open house.

La Pianta appreciates the Commission's consideration of these requests, and looks forward to working cooperatively with the City to the development of an SMP Update that complies with applicable law while addressing the legitimate concerns of affected property owners.

Sincerely,



G. Richard Hill

GRH:ldc

cc: Client

## **Comments to the July 2008 Draft Shoreline Master Program**

**Recurring Issues:** The five issues noted below recur throughout the plan. Rather than repeat the entire text of our concern each time it occurs in the plan, the following issues will be described here, and referenced in the body of comments as appropriate.

1. "Illegal tax Issue" - The Washington appellate court recently decided Citizens' Alliance of Property Rights v. King County, \_\_\_ Wn.App. \_\_\_ P.3d \_\_\_, 2008 WL 2651455 ("CAPR case"), in which the court invalidated a portion of King County's sensitive areas ordinance. The County's blanket imposition of clearing limits on rural zoned property irrespective of the actual impact caused by the specific development of those properties was deemed an illegal tax under RCW 82.02.020. Similarly, the City of Tukwila is proposing in its plan to take property from owners along the shoreline without first determining whether their development proposals cause any adverse impact that requires mitigation. The City may not adopt a shoreline building setback regulation that constitutes a one-rule-fits-all exaction. To be valid, the City must prove that its proposed exactions are reasonable, and are proportional to a specific identified adverse impact.
  
2. "Ultra Vires Issue" - In the plan, the City of Tukwila repeatedly oversteps the bounds of its legal authority to regulate property. The Shoreline Management Act, Chapter 90.52 RCW, limits the City's regulatory authority to impose regulations. The City is limited to the adoption of regulations that "preserve the natural character of the shoreline." In other words, the regulations must be designed only to prevent any additional harm to the habitat. As was made clear in Skagit County v. Western Washington Hearings Bd., 161 Wn.2d 415, 166 P.3d 1198 (2007), the authority to "prevent" or "protect" habitat does not include the authority to "restore" or "enhance" habitat. In its plan, the City exceeds its authority, because it proposes regulations intended to restore and enhance habitat. Washington law does not allow the City to adopt such regulations.

3. "Public Participation Issue" - Washington law requires the City to provide interested parties with a "full opportunity" for involvement in the development of the SMP and that the City "shall not only invite but actively encourage participation." RCW 90.58.130 (emphasis added). Also, state regulations provide that the City "shall make all reasonable efforts to inform, fully involve and encourage participation of all interested persons." WAC 173-26-090. In addition, "local government shall solicit public and agency comment during the drafting of proposed new or amended master programs." WAC 173-26-100. For governments planning under the Growth Management Act ("GMA"), such as the City, "local citizen involvement strategies should be implemented that insure early and continuous public participation." Id. State regulations further provide that these citizen involvement strategies should include the following measures, among others:

(1) each planning jurisdiction should endeavor to involve the broadest cross-section of the community, so that groups not previously involved in planning become involved, (2) the public should be involved at the earliest possible time in the process of comprehensive planning under the act, (3) full use should be made of the planning commission as a liaison with the public, (4) once the plan is completed in draft form, or as parts of it are drafted, a series of public meetings or workshops should be held at various locations throughout the jurisdiction to obtain public reaction and suggestions, (5) at each stage of the process when public input is sought, opportunity should be provided to make written comment, (6) each jurisdiction should make every effort to collect and disseminate public information explaining the act and the process involved in complying with it, (7) Whenever public input is sought on proposals and alternatives, the relevant drafts should be reproduced and made available to interested persons,

and (8) all comments and recommendations of the public should be reviewed. Adequate time should be provided between the time of any public hearing and the date of adoption of all or any part of the comprehensive plan to evaluate and respond to public comments. As is immediately apparent when the City's efforts to inform the public is compared against the recommendations set forth in state law and regulations, the City has failed to meet the requirements for public participation for a plan of this importance to the community, severe economic impact, and complexity.

4. "Constitutional Takings Issue" - The plan proposes to require property owners to grant to the public a right of access to their shoreline properties as a condition of receiving development permits, with no demonstrated nexus between impacts created by specific development projects and the public purpose asserted as support for the exaction. This type of regulation/exaction is in direct conflict with federal and state constitutional law. The City may not require owners to provide that access without full and fair compensation. See Nollan v. California Coastal Commission, 483 U.S. 825 (1987).

5. "Failure to review Comprehensive Plan Consistency" - The draft shoreline plan is inconsistent with the City's comprehensive plan. Under state law, all development regulations must be consistent with the City's comprehensive plan. This inconsistency is a fatal flaw. The City should review the draft plan to address comprehensive plan consistency. No shoreline plan adoption should be proposed until the City has assured itself and the public that the shoreline plan is fully consistent with the City's comprehensive plan.

<u>Item #</u>	<u>Section</u>	<u>Page</u>	<u>Comments</u>
1	S1.1	1 [1]	The City notes that the SMP is intended to promote the establishment of shore junctions where possible. The City cannot use its shoreline development regulations to impose an individual property owner's duty to effect the establishment of shoreline junctions. See the illegal Tava issue and the Ultra Vires issue.
			<b>STAFF RESPONSE:</b>
2	S1.1	4 [13]	The second sentence of this paragraph suggests that the CWA requires only "coordinated citizen participation." However, RCW 36.70A.020(1) and RCW 36.70A.030 will require the involvement and participation by all interested parties in the preparation of these development regulations, including the citizens of the City. The City has failed to alert or involve the public to the preparation of its draft SMP. This draft was issued as a final product following undisclosed rounds of internal and interagency review in August 2008. Several years after the City commenced the process to update its SMP.
			<b>STAFF RESPONSE:</b>
3	S12(E)	4 [12]	In the first sentence, the City notes that the TUC and MIG shall be redeveloped and such redevelopment will affect the character of the river. How will re-development of these areas affect the character of the river behind the existing armored levees on the 205 Project area?
			<b>STAFF RESPONSE:</b>

4 §2.1 5 In the first bullet point of this section, the City asserts that it has included a citizen participation process, buses discussed above. In the Public Participation section, the City has not complied with state requirements. The City needs to implement a proper public participation process with affected stakeholders and citizens prior to final review and adoption of the SMP.

**STAFF RESPONSE:**

5 §2.2 5 The elements required by the SWA include economic development. However, the proposed draft severely restricts the ability to develop the first 200 feet of the shoreline environment. Indeed, the draft SMP includes discussions of all of the SMP elements except economic development. The City must include a discussion of its goals and policies concerning economic development of the first 200 feet of shoreline environment within the City's existing areas that are already developed separately from undeveloped areas. Furthermore, the City should include a discussion or study determining the actual or estimated costs of these regulations in terms of impaired development potential of the shoreline area, as well as an estimate of the lost tax revenues upon full implementation of this regulation. The Plan fails to note how many commercial buildings will be declared nonconforming. Is there a list of building sites or other structures, e.g. parking lots, etc. that will be rendered nonconforming upon adoption of a plan amendment?

**STAFF RESPONSE:**

6 §2.2 5 In this section, the City discusses the elements of the SMP and notes other applicable laws concerning the implementation of the SMP. However, the City has failed to include a discussion of laws that limit the application of the SMP and the City's authority to impose restrictions on the owners of property along the shoreline. Limitation of the City's authority is a pertinent discussion of the plan. A separate section should be added that discusses the limitation of the City's legal authority including a discussion of constitutional limitations, as well as the illegal Tax issue and the utilities issue.

**STAFF RESPONSE:**

7 §2.3 6.15 The City should identify each individual step taken by the City in formulating this proposed draft SMP, and note whether public participation was involved for each step. In addition, the City should explain why the City did not include public participation at that point. For example, the City did not cause its draft July 2007 plan submitted to Ecology to be reviewed by the public. As noted above, this lack of public involvement presents a Public Participation issue.

**STAFF RESPONSE:**

§2.4 7 The draft SMP asserts that the City "continued the previously stated citizen involvement program." This is untrue. Public participation one month ceased eighty years ago and did not resume until the last three weeks, following rounds of internal and emergency review and revision of the plan not open to the public. The City's failure to involve the public in the review and development of its plan is a Public Participation issue.

**STAFF RESPONSE:**

§2.4 7-3 Citizen outreach activities conducted nearly a decade ago on a different draft plan are not sufficient to meet the public participation obligations imposed by state law (as explained in the Public Participation issue). The City will need to correct its failure to meet state law by re-opening the SMP process to allow for meaningful communication with the public.

**STAFF RESPONSE:**

§2.4 7 As explained in the Public Participation issue, the City should detail the actual "citizen involvement" in each step of the process to create the current plan. What interested parties reviewed this plan?

**STAFF RESPONSE:**

§2.5 8 The second bullet point states that citizen involvement included the preparation of a Shoreline Budget Council Report from 1993 (15 years ago). Was any part of this report adopted and incorporated into this draft plan? Where, and which sections?

**STAFF RESPONSE:**

12	S2.5	8	The City claims that citizen involvement included the Tukwila Citizens group from 2000. That group prepared a report for the draft SMP during that time. What happened to the recommendations from that group? Were they incorporated into the draft plan? Which sections? For those recommendations not incorporated into this plan, why not? A detailed explanation should be provided, especially since the City claims that its building off of the efforts of that group.	<b>STAFF RESPONSE:</b>
13	S2.5	7.8	The dates of the activities described in bullet points 1, 3 through 6, and 8 were not included and should be added.	<b>STAFF RESPONSE:</b>
14	S3	10	"Flood plains." Should the delineation of the flood plain be the sole province of FEMA? Why does the City want to bring an alternative definition from the FEMA determination? What is the technical Best Available Science basis of the use of a different definition?	<b>STAFF RESPONSE:</b>
15	S4.5(E)	20 [14]	In the last sentence, the City notes that development of the shoreline has the potential to provide restoration of habitat. It has noted in the ultra vires issue, the City will not be allowed to impose a development regulation to require restoration of habitat.	<b>STAFF RESPONSE:</b>
16	S4.4	21 [12]	The City omits key legal constraints on implementing restoration and potential超se conflicts of the Tukwila Ultra Viability issue and the ultra vires issue that limit the ability of City to impose regulations to implement those goals.	<b>STAFF RESPONSE:</b>

17	S4.4	22.12	<p>The second paragraph notes that the laying back of levees to create mid-bench slopes would provide habitat and require additional easement area. However the plan does not discuss the legal authority of the City to take land from property owners additional easement area or such. Is it intended for the City friends to acquire such land pursuant to condemnation has the City determined if such funds are available? If not, is there a fee or a building permit application with the City of Tukwila such a requirement? If funds are not available at such time? Setting aside the above legal issue, the requirement of a bench is seemingly intended to improve habitat and the Ultra Vires issue arises again.</p>	<b>STAFF RESPONSE:</b>
18	S5.1	25	<p>The City developed a Draft Shoreline Restoration Plan in 2007 that was finalized in May 2008 without any input from the public which chose not to a Public Participation issue. A failure to satisfy the Public Participation issue would be fatal to this draft plan.</p>	<b>STAFF RESPONSE:</b>
19	S5.2	26	<p>Comment to Table 1 in the second row, what specific BMPs for stormwater are being considered that differ from the City's current city wide regulations for stormwater?</p>	<b>STAFF RESPONSE:</b>
20	S5.4	27-28	<p>The City wants to "enlarge channel cross-sectional areas" for the purpose of increasing flood storage. However FEM has certified certain of the levees in the City which includes certifying that properties behind those levees are not within the floodplain. Why is the City increasing channel cross section areas in every part of the City, even in those areas with FEM certified levees?</p>	<b>STAFF RESPONSE:</b>
21	S5.4	27-28	<p>The City again discusses actions intended to restore the ecosystem. However the goal of the SVP is to regulate development so that "no less" of shoreline junction occurs. The City will need to revise its draft plan to bring it within the boundaries of its authority to regulate the shoreline (The Ultra Vires issue)</p>	

**STAFF RESPONSE:**

22 S6.1 30 New Policy 5-12 Bullet Item #1 is the goal of "no net loss" consistent with the remainder of the policy, which will reflect enhancement of the shoreline? Again, the ultimate issue is applicable here.

**STAFF RESPONSE:**

23 S6.2 31 Policy 5-21 The City should list those portions of the SMP that exceed the obligations set forth in the King County Flood Hazard Management Plan. For example, the County requires that levees within the 205 project area meet Army Corps of Engineers ("ACOE") regulations. The City proposed regulations in this plan exceed the County requirements.

**STAFF RESPONSE:**

24 S6.3 32 Policy 5-3-4 Why has the City created the policy of installing levees for the purposes of protecting life, safety and welfare of the public? Is the flooding of lands within a heavily urbanized City a greater benefit to the people than the creation of flood control works that protect life and property? Would a better approach be to allow U.S. Army Corps of Engineers and Jones Levee to implement their own regulations per permit?

**STAFF RESPONSE:**

25 S6.3 32 Policy 5-3-4 The prohibition against the construction of new flood control facilities unless constructed to incorporate habitat restoration features is a "walking off property." Reconstruction of levees to a higher scope may be defensible on reasons of safety but if that reason is not valid, the government's need to take the land and Federal and state constitutional statutes and case law demand that the City pay just compensation for these takings. Also the City's implementation of policies to accomplish this goal will violate the illegal Tax issue.

**STAFF RESPONSE:**

<p>26</p> <p>S6.4</p>	<p>34 Is the policy of removing armored shorelines feasible in the City of Tukwila while respecting private property rights? Removing armored Shorelines will result in more flooded and leaving less developed land. The effect of less land in a heavily urbanized city is immediately apparent. For example, has the City provided a detailed analysis of the expected increase of population within the city, the amount of land required to handle additional population, the effect of removing a significant amount of land from within the heart of the City, and more practically, where armored shorelines can be safely removed and the potential of increased flooding displaced citizens and damaged property? In addition has the City studied the economic impact from the loss of extremely valuable land buildings and an estimate of the loss to the City/Stax base by the removal of armored shorelines?</p>	<p><b>STAFF RESPONSE:</b></p>	
<p>27</p> <p>S6.4</p>	<p>34 New Policy 5.6.5 Obtaining additional easement areas through this draft SMP will constitutes an illegal Tax and will be Ultra Vires</p>	<p><b>STAFF RESPONSE:</b></p>	
<p>28</p> <p>S6.6</p>	<p>36 New Policy 5.6.3 The City notes that it will incorporate river access requirements. In the shoreline, but it will not be able to do so under this plan and proposed regulations without runing agou of the illegal tax issue and the Ultra Vires issue.</p>	<p><b>STAFF RESPONSE:</b></p>	
<p>29</p> <p>S6.6</p>	<p>37 New Policy 5.6.5.5.0.8 and 5.6.11 Are the inclusion of amenities such as benches, drinking fountains, public parking etc an obligation of the City or private property owners? Who will maintain these improvements? Who will be liable for damages? Has the City planned for the added expense of maintaining public access areas along the shoreline? Property owners will not maintain these areas because of the expense and liability</p>	<p><b>STAFF RESPONSE:</b></p>	
<p>30</p> <p>S6.9</p>	<p>39 New Policy 5.9.2 The obligation to protect vegetation and restore degraded river banks is costly and the City cannot impose this obligation on owners will be Ultra Vires</p>		

**STAFF RESPONSE:**

39 S6.9 New Policy 5.9.2 How is the City determining that developments along the shoreline impact fish? Does development along the shoreline behind armored levees impact fish? The City must review specific projects first before concluding that impacts will occur and only then require appropriate mitigation.

**STAFF RESPONSE:**

40 S6.10 39 NEW Policy 5.9.2 The City should be clearer in stating the reason(s) for setting back levees. The fact is that laying back levees is not related to the movement of shoreline habitat functions. The increase of the buffer to 125 feet in the UCZ requires the following steps: (1) the increase of the levee slope from current conditions to 2.5%; (2) the construction of a 10 foot wide setback; (3) the increase of the levee from 13-14 feet to 20 feet; and (4) the encumbering of an additional 6 feet on the landward side of the levee for an access easement. The purpose of each of those requirements are as follows: respectively (1) reduce maintenance costs; (2) habitat creation; (3) public path along the shoreline and (4) reduce maintenance costs. As is apparent, the primary reason for increasing the buffer is to reduce maintenance costs and to provide public paths.

This conclusion was confirmed by Ryan Larson of the City when he provided the critical testimony at the Planning Commission Workshop on August 7, 2008. Mr. Larson noted that the laying back of levees was required so that King County would accept the responsibility of maintaining the levees. King County would not accept the obligation of maintaining levees less than 25% because of the increased costs of maintaining steel levees. Mr. Ryan Larson's testimony on the reason for the increased riverside setbacks is nowhere to be found in the draft SMP. Instead, the plan states that the laying back of levees is required to improve shoreline habitat functions. So the financial cost of maintaining the levees is the primary reason for increasing the riverside setbacks as opposed to environmental concerns. Although the costs of the levees is a legitimate concern, the levees benefit the entire city of Tukwila. In other words, the costs of maintaining those levees should be borne by everyone and not just the owners of property along the shoreline.

Mr. Larson was also incorrect concerning the area within the 200 Project area. King County can maintain and will permit Severe Levees. As noted elsewhere, the Army Corps of Engineers on March 21, 2007 requires a 2:1 slope levee and does not require a levee which standard was adopted by King County when it adopted its current Flood Hazard Management Plan. The City must use the SMP to reflect accurately the rationale indicated by Mr. Ryan Larson's testimony e.g. reducing maintenance costs, and the City must cooperate plans for financing the acquisition of the easements necessary for the back levees. The taking of private Shoreline property to reduce the maintenance costs of levees under the auspices of the SWA is unlawful unless the SWA is compensated first and paid.

**STAFF RESPONSE:**

S7.2 - 43 The City states that restoration opportunities are numerous, and activities that provide restoration should be prioritized. What are these opportunities and where are they located?

**STAFF RESPONSE:**

S7.4 - 46 The City should include the Tukwila South PAA area within the High Intensity Zone of within a more modified Urban Conservancy Zone. As identified in the EIS prepared for the Tukwila South development, Tukwila South (including the annexation area) shall be developed into a high density area with an array of commercial and residential uses that is different from every other zone of the City. The focus of the property will be to develop into a highly productive, generating income and opportunity for the citizens of the City of Tukwila. The definition of "High Intensity" would fit this area more appropriately than the "Urban Conservancy" zone.

**STAFF RESPONSE:**

S7.6 - 49 The City states that it requires a 2:0 foreshore setback on the top of the new slope of the back levees but it does not state the reason for the need of the 2:0 foot area. Most levees in Tukwila do not have a 2:0 foot top of the levee now (most have a 13/4:0). Is the 2:0 foot related to some shoreline habitat or levee issue? Is the 20 foot area required to meet the City's desire for a 20 foot public path along the shorelines noted in Chapter 11.3.2?

**STAFF RESPONSE:**

36 S7.6 49 Why does the City need a 10 foot bench in the middle of the levee?

**STAFF RESPONSE:**

37 S7.7 51 The City permits an owner in the HE to provide a slope meeting the requirements set forth in the last paragraph on page 5. Is the owner allowed to provide an embankment slope no a 10 feet access easement on the backside? Why is this zone treated differently from the area south of I-95?

**STAFF RESPONSE:**

38 S9.1 60 Comment on Bullet 22. Is it true that the new SMP will apply with the change in occupancy for a building? What specific application is triggering this requirement? A change in tenancy typically occasions a building permit application or tenant improvement work, but is there enough trigger compliance with all of the requirements of the SMP? Is it triggering in the plan that will cause very expensive obligations that are not proportionate to just this division should be deleted.

**STAFF RESPONSE:**

39 S9.1 60 The City states that nonconforming uses will be governed by current TMC 18-70. The loss of development rights following destruction of buildings by fire and earthquake would be an incredible hardship to existing owners who have no desire to change their current use. At the very minimum, owners and purchaser should be permitted to continue the existing use whether such buildings need to be repaired or reconstructed.

**STAFF RESPONSE:**

40 S9.2(A) 60 The requirement to site new development to allow a natural bank inclination of 2:5 is a blanket regulation and is not tailored to a specific impact from the development of this specific parcel. This requirement constitutes an illegal fax issue.

**STAFF RESPONSE:**

<p><b>41</b>      S92(A)(5)      61.      There requirements that shore platforms must be designed to require public access to the river without compensation is a Constitutional Takings issue.</p>	<p><b>42</b>      S93(A)(2)      62.      The requirement that shore platforms must be designed to require public access to the river without compensation is a Constitutional Takings issue.</p>
<p><b>STAFF RESPONSE:</b></p>	<p><b>STAFF RESPONSE:</b></p>
<p><b>43</b>      S93(B)(3b)      62.      If the City is requiring access in Section 93(A)(2) under what circumstances would the condition that if access is provided then setbacks can be reduced ever be true? Why is the TUC being treated differently? Also neither of the two conditions which permit exceptions to the side yard and front yard reduction are tied to a specific impact.</p>	<p><b>44</b>      S93(B)      62.      It is unreasonable to limit loading docks and service areas to the landward side of the buildings unless this requirement renders the project "financially unfeasible."</p>
<p><b>STAFF RESPONSE:</b></p>	<p><b>STAFF RESPONSE:</b></p>
<p><b>45</b>      S92(C)      63.      Why is the City imposing a height restriction? The underlying zoning height limitations 115' in the TUC and TVS area is inappropriate to limit building heights in excess of the height requirements of the underlying zoning regulations for the sake of "public view"? Has the City calculated the amount of lost value to owners and loss to revenue to the City because of the imposition of this height restriction? Has there been any bargaining whatsoever with regard to the costs of "public views" and private property owners' rights? The Shoreline Management Act allows increased height if the views or a substantial number of island residents are not unduly impacted. In the TUC and TVS area there would not be any such impact so greater heights are warranted.</p>	<p><b>STAFF RESPONSE:</b></p>

<p>46 S94 64 This section appears to create standards for stormwater different from the city-wide Stormwater Standard. Why is the City creating a different standard for the shoreline area?</p>	<p><b>STAFF RESPONSE:</b></p> <p>47 S94© 64 This section should be revised to prohibit any shoreline development that causes an increase in surface runoff that is not mitigated. Nearly all development will result in increased runoff. That is why owners provide mitigation. The sentence as written would prevent any development that increases runoff AND require mitigation.</p>	<p><b>STAFF RESPONSE:</b></p> <p>48 S94(d) 64 Will the City require shoreline restoration of the area disturbed by the new or existing outlet or require restoration of the entire shoreline owned by the property owner?</p>	<p><b>STAFF RESPONSE:</b></p> <p>49 S94(f) 64 What are rain gardens and what criteria will be imposed by the City?</p>	<p><b>STAFF RESPONSE:</b></p> <p>50 S95(D) 65 The City should prohibit development of buildings that impact the shoreline.</p>	<p><b>STAFF RESPONSE:</b></p> <p>51 S96(B) 66 Designing lots to avoid armoring means that buildings need to be set away from the shoreline. Which means less density and development is still available to the City.</p>
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<p><b>52</b>      <b>S9.8C</b></p> <p>From a practical standpoint the list of priorities is illogical and from a legal standpoint mitigation should be the first priority. The first item in the list poses to avoid the impact by requiring owners to take the action resulting in the impact. Impact from development can always be avoided if the development never occurs. Restricting development is hardly a practical nor legal solution for private property. Under Washington law the City may impose regulations only that are proportional to the impact and related to the development. Prohibiting the action from the first priority in the list without determining whether it is proportionate to the impact would not be lawful unless it lessens the impact. It would be unavailing to mitigate the impact. The City should reverse the order of priorities and place mitigation as the first priority on the list.</p>	<p><b>STAFF RESPONSE:</b></p>	<p><b>53</b>      <b>S9.8C</b></p> <p>What are the criteria the City will use to determine the feasibility and applicability of each priority before moving onto the next item in the list?</p>	<p><b>STAFF RESPONSE:</b></p>	<p><b>54</b>      <b>S9.9(B)</b></p> <p>The City is interfering too much in an owner's use of his property by requiring parking facilities to be located landward of the shoreline. The City's desire to control the shoreline will destroy an owner's ability to design the property in the manner that best suits the owner's circumstances and needs. Despite the provision for exceptions to this rule in the event of financial infeasibility, City staff are not versed in business economics or the owners' particular circumstances to make this provision manageable. The City should remove this requirement.</p>	<p><b>STAFF RESPONSE:</b></p>	<p><b>55</b>      <b>S9.9(B)</b></p> <p>Issue that the City will permit structures only in a portion of the Tukwila? Why are other areas of the City treated differently? The City should expand this exception to include the Tukwila Valley South area and the Tukwila South PAA area.</p>	<p><b>STAFF RESPONSE:</b></p>
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56 S99(F) 70 For low impact development techniques there is a practical difference between a technique that is feasible and a technique that is "reasonable" from a business standpoint. Many techniques are possible to implement but are not reasonable to do so because of cost. The City does not but should include a consideration of the cost to the owner in determining whether a low impact development technique is "feasible."

**STAFF RESPONSE:**

57 S910(A)(1B) 71 The requirement to remove non-native vegetation in the shoreline is expensive and burdensome. If the property owner was not responsible for the presence of or legally planted at the time the non-native vegetation, the City can not require the owner to remove it now because of the UltraVines issue.

**STAFF RESPONSE:**

58 S910(B)(2) 71 The proposal that the City can relocate and redesign buildings because offices is completely unacceptable. Trees can be replanted or replaced. The property owner should control the design of the site.

**STAFF RESPONSE:**

59 S910(B)(6) 71 The obligation to place trees along the shoreline would constitute enhancement of the shoreline, and would be prohibited on the reasons discussed in the UltraVines issue.

**STAFF RESPONSE:**

60 S910(B)(7) 72 The City needs to clarify how close to the shoreline that dead trees must be allowed to remain.

**STAFF RESPONSE:**

61 S910C(1a/b) 73 The obligation to remove non-native vegetation and plant native vegetation is for the purpose of restoring and enhancing habitat which is illegal for the reasons discussed in the UltraVines issue.

**STAFF RESPONSE:**

62. §9.10(3) What is the definition of "River Buffer?"

**STAFF RESPONSE:**

63. §9.10(D)(6) Owners should be able to use pesticides provided such use complies with all applicable federal and State laws. Owners should not be required to obtain the City's approval or a plan and show no other reasonable alternative exists. As an owner of approximately 2.5 miles of the shoreline, this prohibition against the use of pesticides would be unreasonable.

**STAFF RESPONSE:**

64. §10.12(B)(12) 98 (A) The addition of a new funding source for mitigation can may be approved that requires mitigation resulting improved functions and enhancement of the shoreline habitat and is prohibited because of the reasons discussed in the Ultra Vires issue.

**STAFF RESPONSE:**

65. §10.12(D)(3) 99-100 (A)-(B) The requirement that minimum performance standards for a mitigation plan result in improved habitat again is an enhancement of shoreline habitat and is prohibited because of the reasons discussed in the Ultra Vires issue.

**STAFF RESPONSE:**

**S11** 66 S12 102 107 The City's requirement for public access across private property as a condition of issuing a permit is constitutionally prohibited pursuant to the reasons set forth in the Constitutional Takings issue. The City's attempt to save this section by including Section 110 Exemptions from Provision of On-Site Public Access, is not sufficient to save this Section from being an illegal taking of private property by the city. Furthermore, it is not apparent what problem the City is trying to cure. Rather, the regulation is a blanket regulation that can problem caused or exacerbated by the development. Private property owners have a variety of reasons to keep people off of their properties, including safety, security, liability and privacy, all of which should be respected by the City. The entire provision must be struck.

**STAFF RESPONSE:**

**S11** 67 S12 108-110 The City's requirement that owners design their lots according to the dictates in this regulation is unnecessary and impractical. The entire section should be revised to provide a recommendation to owners.

**STAFF RESPONSE:**

**NOTE - THE ABOVE COMMENTS DO NOT CONSTITUTE ALL OF THE OWNER'S COMMENTS. THE LIST CONTAINS THE ISSUES IDENTIFIED BY THIS OWNER AS OF THIS DATE BECAUSE OF THE CONDENSED PERIOD IN WHICH THE OWNER HAS HAD TO REVIEW THE DRAFT SMP AND PROVIDE COMMENT. THE OWNER REQUIRES ADDITIONAL TIME TO UNDERSTAND FULLY THIS DRAFT PLAN AND ITS EFFECTS ON THE OWNER'S PROPERTIES.**